

FILED 07 NOV 26 11:16AM '07 USDC OR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MICHAEL-TRENT BARNES,

Petitioner,

Civil No. 07-1176-CL

v.

FINDINGS AND  
RECOMMENDATION

ALBERTO GONZALES, et al.,

Respondents.

CLARKE, Magistrate Judge.

Petitioner a federal inmate incarcerated at FCI Sheridan filed a "Writ of Habeas corpus ad subjiciendum" (sic) which was docketed as a petition for habeas corpus relief under 28 U.S.C. § 2241.

The court was unable to determine from petitioner's 40 page, single typewritten spaced pleading what petitioner's claim is or what relief he seeks.

By Order #7) entered August 24, 2007, petitioner was advised: "[F]ederal prisoners challenging the legality of their conviction or sentence must file a motion to vacate

sentence pursuant to 28 U.S.C. § 2255. Federal prisoners challenging the execution of their sentence may file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Stated another way, if petitioner is alleging that his conviction or sentence was improper he should file a motion under 28 U.S.C. § 2255. If petitioner is alleging that the conditions of his confinement are unconstitutional or that the way he is being required to serve his sentence is improper, he should file a petition under 28 U.S.C. § 2241.

In either case, Local Rule 295-1 (a) requires that such motions and petitions be 'legibly written or typewritten on forms supplied by the court.'" Order (#7), p. 2.

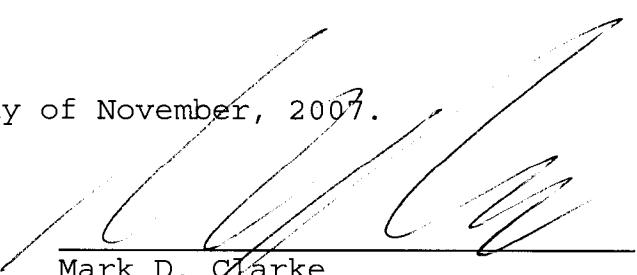
Petitioner was allowed 30 days from the date of the court's order to file an amended pleading on a form to be provided by the Clerk of the Court and advised that failure to file an amended petition as directed would result in the dismissal of this proceeding for failure to prosecute. The Clerk was requested to send petitioner both forms.

Although petitioner has filed a number of "notices," he has not filed an amended petition as directed by the court. Therefore, petitioner's "Writ of Habeas Corpus ad Subjiciendum" (#1) should be denied for failure to state a claim. All pending motions and "notices" should be denied. This proceeding should be dismissed for failure to prosecute.

This recommendation is not an order that is immediately

appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 14 day of November, 2007.

  
Mark D. Clarke  
United States Magistrate Judge